



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** U.S. Defense Systems, Inc.

**File:** B-245006.2

**Date:** December 13, 1991

Thomas D. Boyatt for the protester.

Kathleen D. Martin, Esq., Department of State, for the agency.

James Cunningham, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that agency improperly evaluated awardee's technical proposal as superior to protester's technical proposal is denied where record provides no indication that the agency's technical evaluation was unreasonable.
2. Protest that two of six technical evaluators were biased against protester is denied where record contains no evidence of specific intent to harm protester and scores awarded by the two allegedly biased evaluators did not vary unreasonably from the scores awarded by the other evaluators.
3. Protest of agency's alleged failure to apply evaluation preference to domestic contractor is denied where solicitation did not provide for evaluation preference; award based on a factor not identified in solicitation would have been improper.

### DECISION

U.S. Defense Systems, Inc. (USDS) protests the Department of State's selection of Khalifa Management Services, Inc. (KMS) for award of a contract for security guard services to protect the United States Embassy and related residences in Maputo, Mozambique. USDS alleges that the State Department improperly rated KMS' technical proposal as superior to USDS' technical proposal; that two of the Department's evaluators were biased against USDS; and that the Department did not give USDS an evaluation preference for being a United States concern.

We deny the protest.

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The State Department issued the request for proposals (RFP) on June 20, 1989. The RFP provided that award would be based on the agency's evaluation of technical and cost factors, with technical factors worth 60 percent and price factors worth 40 percent of the overall evaluation. The RFP listed the following technical evaluation criteria in descending order of importance: (1) experience and past performance in the region of Mozambique, including licenses to operate in Mozambique; (2) technical approach, consisting of the offeror's management plan and knowledge and familiarity in performing the services sought; and (3) technical personnel, which included key personnel and other personnel. The price score was to be determined by awarding the maximum of 40 points to the lowest-priced proposal and computing the other price scores based on a comparison of each offeror's price to the low price.

In response to the solicitation, initial proposals were submitted by USDS, KMS, and one other offeror; subsequently, best and final offers (BAFOs) were submitted by each offeror. The proposals were individually evaluated by each member of a six-member evaluation panel; the evaluators then met as a group to discuss the ratings and awarded the following scores.

	<u>USDS</u>	<u>KMS</u>
Technical Score	46.5	49.0
Price Score	<u>37.2</u>	<u>40.0</u>
Total Score	83.7	89.0

Based on the fact that KMS' proposal received the highest technical score and offered the lowest cost, the contracting officer determined that KMS' proposal represented the best value to the government. This protest followed.

USDS first challenges the agency's determination that KMS' proposal was technically superior to its own, arguing that its experience and technical capabilities are "manifestly superior" to those of KMS. Among other things, USDS asserts that it has "worldwide capability and experience" and KMS' experience is limited to a "narrow geographical area."

Our Office will not substitute its judgment for the agency's as to the relative merits of proposals, but will examine the proposals and agency's evaluation to ensure that the evaluation was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Travel Centre, B-236061.2, Jan. 4, 1990, 90-1 CPD ¶ 11. The fact that the protester disagrees with the agency's conclusion does not itself establish that the agency acted unreasonably. Id.

As noted above, section M of the solicitation provided that an offeror's "experience and past performance in the region of Mozambique" (emphasis added) would be the single most important technical evaluation factor. The record indicates that KMS' proposal offered greater experience and past performance in the region of Mozambique than did USDS' proposal; accordingly, KMS received a higher rating under this most important technical evaluation factor. Similarly, our review of the agency's evaluation of proposals under the other technical evaluation factors--technical approach and technical personnel--provides no basis to question the reasonableness of the agency's conclusion that KMS' proposal was technically superior to USDS' proposal.<sup>1</sup>

USDS next protests that the agency's evaluation was improper because two of the six evaluators--the Administrative Officer and the General Services Officer--were improperly biased in favor of KMS' less expensive proposal. Specifically, USDS asserts:

"there is a built-in conflict-of-interest in having administrative officers, general services officers and [business and finance] officers making technical evaluations of security contracts. These officers are primarily concerned . . . with the cost of security contracts and the ease of controlling the security contractors. Both of these concerns argue in favor of awarding a security guard contract to a local rather than a [United States] company."

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<sup>1</sup>USDS asserts that the evaluation was unreasonable because the individual evaluators made different assumptions with regard to: the number of contracts USDS had previously performed and length of its experience in the Mozambique region; and the number of years of experience of certain personnel proposed by USDS. Although USDS complains that the evaluators' assumptions were inconsistent, it does not identify what it believes the proper conclusion of the evaluators in each of these areas should have been. We have reviewed the evaluators' worksheets and determined that even if each evaluator had credited USDS with the highest number of contracts or years of experience which any evaluator credited to USDS, its proposal would still have received a lower technical score than KMS' proposal. Accordingly, USDS was not prejudiced in this regard. See The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271; Ira T. Finley Invs., B-222432, July 25, 1986, 86-2 CPD ¶ 112.

In alleging bias, USDS refers to the scores initially given by the individual evaluators, asserting that the Administrative Officer and the General Services Officer rated USDS' proposal substantially lower than did the other four evaluators and that this variation demonstrated their bias.

It is not unusual for individual evaluators to have disparate judgments regarding the relative strengths and weaknesses of technical proposals. Mounts Eng'g, 465 Comp. Gen. 476 (1986), 86-1 CPD ¶ 358; Syscon Servs., Inc., B-235647, Sept. 21, 1989, 89-2 CPD ¶ 258. Disparities in evaluator ratings do not in themselves establish that the evaluation process was flawed or otherwise irrational. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75. In alleging bias on the part of procurement officials a protester must establish that the evaluating officials intended to harm the protester, since contracting officials are presumed to act in good faith. Parameter, Inc., B-241652, Feb. 28, 1991, 91-1 CPD ¶ 229; Universal Shipping Co., Inc., B-223905.2, Apr. 20, 1987, 87-1 CPD ¶ 424.

Here, contrary to USDS' argument that the evaluators' scores varied unreasonably, we note that the individual scores given to USDS' technical proposal ranged from a low of 42.5 points to a high of 49 points (a spread of only 7 points and approximately 14 percent); similarly, the individual scores given to KMS' proposal ranged from a low of 45 points to a high of 52 points (again, a spread of only 7 points and approximately 14 percent).<sup>2</sup> Further, contrary to USDS' argument that the Administrative Officer and the General Services Officer skewed the overall evaluation, four of the six evaluators rated KMS' technical proposal superior to USDS' and, of the remaining two evaluators, one rated USDS' proposal only one point higher than KMS' and the other rated USDS' proposal only 2.5 points higher than KMS' proposal. Finally, the lower scores awarded to the USDS proposal by the Administrative Officer and the General Services Officer reflect, at least in some degree, legitimate concern with

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<sup>2</sup>The individual evaluators' technical scores were as follows:

	<u>USDS</u>	<u>KMS</u>
Evaluator A	43.5	50.0
Evaluator B	42.5	52.0
Evaluator C	49.5	47.0
Evaluator D	48.0	50.0
Evaluator E	49.5	50.0
Evaluator F	46.0	45.0

certain aspects of the USDS proposal.<sup>3</sup> In short, the record does not indicate that the evaluators' scores varied irrationally, nor is there any evidence of an intent to harm USDS; accordingly, USDS' protest that the Administrative Officer and the General Services Officer were biased against USDS is without merit.

Finally, USDS protests that the State Department improperly failed to accord its proposal an evaluation preference under section 136 of the 1990 Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, Pub. L. No. 101-246, 104 Stat. 15 (1990). This provision requires the Department to give preference in awarding contracts for guard services abroad to United States offerors that are price competitive with non-domestic offerors and are otherwise qualified to perform. See Wackenhut Int'l, Inc., B-241594, Feb. 14, 1991, 91-1 CPD ¶ 172. In responding to this portion of USDS' protest, the agency notes that the solicitation at issue here did not state that any particular class of offerors would receive a preference.

In the absence of a solicitation provision advising all offerors of an evaluation preference that would be applied, evaluation on the basis of a preference for a certain class of offerors would have been improper. See Wackenhut Int'l, Inc., supra; Mycon Constr. Co., Inc., B-231544, June 14, 1988, 88-1 CPD ¶ 572. Since the RFP here did not advise offerors of any domestic offeror preference that would be applied, the agency was precluded from applying such a preference.<sup>4</sup>

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<sup>3</sup>For example, the Administrative Officer, in rating USDS' proposal lower than KMS' in the area of technical approach, stated that he believed USDS could "effectively manage the operation"; however, he expressed concern that USDS' proposal would require a significant amount of day-to-day supervision by the agency's Regional Security Officer. Similarly, the General Services Officer indicated that he believed USDS' proposal was "very good," but expressed concern that the training USDS proposed focused primarily on the Regional Security Officer. USDS' comments on the agency report did not take issue with these conclusions.

<sup>4</sup>In our decision in Wackenhut Int'l, Inc., supra, we questioned whether the agency's method of implementing Public Law No. ~~101-246~~ satisfied the requirements of that statute. (In that protest, the State Department stated that it was providing a domestic preference by synopsisizing the procurement in the Commerce Business Daily and emphasizing technical factors over cost.) The agency states that in light of the concerns we expressed in Wackenhut, it is currently considering adoption of a 6 percent price

To the extent USDS is arguing that the solicitation should have incorporated an evaluation preference for United States concerns, the protest is untimely. Under our Bid Protest Regulations, protests of alleged solicitation defects must be filed not later than the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by ~~56 Fed. Reg. 3759~~; see Concrete Tech., Inc., B-202407, Oct. 27, 1981, 81-2 CPD ¶ 347.

The protest is denied.



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General Counsel

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preference for United States companies to be included in solicitations for guard services abroad. Application of this preference to USDS' offer here would not have made it the low offeror.